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No. 04-628

Supreme Court, U.S.
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In The Supreme Court of the United States

ALLEN V. JAFFE,

Petitioner,

v.

LISA SPICKLER GOODWIN, JOHN R. WALK, HIRSCHLER, FLEISCHER, P.C., VIRGINIA PHOTOTHERAPY, L.L.C., and DR. RONALD M. LANDESS,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Respondents Virginia PhotoTherapy, L.L.C.[1] ("Virginia PhotoTherapy") and Dr. Ronald M. Landess ("Landess") respectfully request that this Court exercise its discretion to deny the Petition for Writ of Certiorari herein.

STATEMENT OF THE CASE

The Statement of the Case contained in the Petition fails to mention that the subject action is the seventh (7th) suit filed by Allen V. Jaffe arising from his dissatisfaction with hair removal treatments on his back performed by Virginia PhotoTherapy. A more complete recitation of the facts surrounding this case is contained in the Brief in Opposition filed by counsel for Lisa Goodwin, John Walk and Hirschler Fleischer, who Jaffe joined as defendants in the subject action along with the trial judge in his state court actions, Judge Catherine Hammond.

The Statement of the Case is misleading in another important respect. Jaffe discusses the dismissal of one of this state court actions, Jaffe v. Virginia PhotoTherapy, L.L.C., No. CL02-1730, by Judge Hammond. Contrary to Jaffe's factual representations, Judge Hammond did not recuse herself in CL02-1730. There were two cases pending before Judge Hammond: Jaffe v. Virginia PhotoTherapy (CL02-1730) and Jaffe v. Landess (CL02-1729). Judge Hammond recused herself as to No. CL02-1729. However, she ruled that CL02-1730 was clearly barred by *res judicata* and proceeded to grant defendant's Motion to Dismiss. Moreover, Jaffe's statement that the Order in CL02-1730 was entered "without Jaffe's knowledge" (page 3) is absurd. The Order was tendered for entry in open court at a duly noticed hearing and in Jaffe's presence as noted by the trial judge.

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[1] Pursuant to Rule 29.6, Virginia PhotoTherapy states that it has no parent corporation and that no publicly-held company owns 10% or more of its stock.

The foregoing facts may be confirmed by reference to many pleadings in the record of this case. Most prominently, however, Judge Hammond has denied Jaffe's version of the "facts" in her Answer filed in this action. Jaffe also neglects to mention that this case was appealed to the Virginia Supreme Court, which denied his appeal, and that he appealed the Virginia Supreme Court's order to this Court, which likewise denied his appeal. All of Jaffe's arguments regarding the allegedly "fraudulent" order dismissing CL02-1730 were considered and rejected by the Virginia Supreme Court and by this Court in connection with this prior appeal. Jaffe v. Virginia PhotoTherapy, L.L.C., No. 03-868. A copy of the Clerk's notification may be found at page 9(a) of the Appendix to Jaffe's Petition.

Finally, the gravamen of the subject action is that his constitutional rights were denied when Judge Hammond recused herself in No. CL02-1729 but proceeded to rule in No. CL02-1730. In fact, Judge Gary Hicks, the trial judge who was re-assigned No. CL02-1979, not only dismissed that case on the same basis Judge Hammond dismissed No. CL02-1730, but sanctioned Jaffe for frivolous pleading in the case. This case has also been appealed by Jaffe to the Virginia Supreme Court and it has denied his appeal of this case as well. Thus, it is apparent that even if Judge Hammond had recused herself in both of these actions as Jaffe contends, there would have been absolutely no difference in the outcome of the case. The pertinent pleadings and orders regarding the foregoing are appended to the Statement of the Case in the Brief in Opposition filed on behalf of Goodwin, Walk and Hirschler, Fleischer.

ARGUMENT

In the interest of brevity, Virginia PhotoTherapy and Dr. Landess adopt and incorporate in full the Argument presented in the Brief in Opposition filed on behalf of Goodwin, Walk and

Hirschler, Fleischer. All arguments are equally applicable to Virginia PhotoTherapy and Dr. Landess. As to the final argument advanced by Jaffe, it should be noted that Virginia PhotoTherapy and Dr. Landess were named parties to the state court actions which Jaffe seeks to overturn in the subject action.

CONCLUSION

Review on a writ of certiorari is a matter of judicial discretion which should only be exercised for compelling reasons under Rule 10 of the Rules of this Court. This is the seventh (7th) action filed by Jaffe arising from his dissatisfaction with hair removal treatments on his back performed by Virginia Phototherapy. While his allegations and *ad damnum* have escalated with the filing of each successive action, his complaint as stated in his initial action, Jaffe v. Virginia PhotoTherapy, L.L.C., No. CL01-1543, was simply that the hair on his back grew back following the treatments. This has resulted to date in two appeals to the Virginia Supreme Court, one prior appeal to this Court, plus the appeal of the subject action to the Fourth Circuit Court of Appeals. All have been resolved adverse to Jaffe. Jaffe has had far more than one "bite at the apple" on this claim. This Court should exercise its discretion to deny review and let this case end.

Respectfully submitted,

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